

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Marshall Johnson  
LeRoy Koppendrayer  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Complaint by Dakota  
Telecom, Inc. Against Qwest Corporation

ISSUE DATE: July 25, 2001

DOCKET NO. P-421/C-00-373

ORDER APPROVING SETTLEMENT

**PROCEDURAL HISTORY**

On March 29, 2000, Dakota Telecom, Inc. (DTI), a facilities-based competitive carrier serving in the U S WEST, now Qwest, exchanges of Luverne, Marshall and Pipestone, filed a Complaint alleging that U S WEST violated its interconnection agreement with DTI by not completing calls between DTI's customers and the exchanges that have Extended Area Service (EAS) with Pipestone, Marshall, and Luverne. DTI requested an expedited proceeding, pursuant to Minn. Stat. § 237.462, to resolve its complaint. DTI also sought temporary relief requiring U S WEST to terminate EAS calls within the entire local calling areas of Marshall, Pipestone, and Luverne.

**On April 13, 2000, U S WEST filed its answer asking the Commission to dismiss the complaint and to deny the request for expedited hearing and temporary relief. U S WEST maintained that the interconnection agreement does not require U S WEST to permit DTI to interconnect and gain the benefit of U S WEST's EAS system, its prior negotiations with independent telephone companies, and its agreements with local exchanges.**

**On May 5, 2000, the Commission issued its ORDER GRANTING TEMPORARY RELIEF AND REFERRING FOR CONTESTED CASE HEARING and its NOTICE AND ORDER FOR HEARING.**

**On May 30, 2000, Administrative Law Judge (ALJ) Richard C. Luis issued a scheduling order.**

**On December 26, 2000, DTI filed a settlement agreement with its motion to dismiss the complaint.**

**On December 28, 2000, the ALJ filed a letter transferring jurisdiction of the contested case matter to the Commission. The ALJ recommended that the Commission approve the settlement agreement and grant DTI's motion to dismiss the complaint.**

**The Commission met on June 19, 2001 to consider this matter.**

## **FINDINGS AND CONCLUSIONS**

### **I. APPROVAL OF THE SETTLEMENT**

**Qwest, DTI, and the CLEC Intervenors<sup>1</sup> have resolved their disputes and the CLECs (DTI and the CLEC Intervenors) have agreed to withdraw the complaint under terms and conditions set forth in the parties' Settlement Agreement. The local exchange carrier (LEC) intervenors are not parties to the settlement but support it. A copy of the Settlement Agreement is attached to this Order and incorporated into this Order by reference.**

**No party to this proceeding, including the Department, has raised any objections to the settlement agreement. Nor does any party oppose dismissal of the complaint. The ALJ, too, recommends approval of the agreement and dismissal of the complaint.**

**Having reviewed the terms of the proposed settlement, the Commission finds no objection to it. Indeed the settlement appears to resolve some important issues regarding interconnectin at the local tandem, local tandem availability, and tandem functionality, thereby helping to establish an environment conducive to competition in the local service market.**

**Therefore, the Commission will approve the settlement pursuant to Minn. Stat. § 237.076, subd. 2 and dismiss the complaint.**

### **II. NATURE OF THE SETTLEMENT TERMS**

**Parties initially disagreed on how to characterize the nature of the parties' agreement that Qwest perform certain actions regarding local tandem functionality. Specifically, they disagreed about whether their agreement amended the existing interconnection agreement**

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<sup>1</sup> The CLEC Intervenors signing the Settlement Agreement are: Crystal Communications; HomeTown Solutions; Integra Telecom; Northstar Access; Otter Tail Telecom; Tekstar Communications; Val-Ed Joint Venture; Mainstreet Communications; Onvoy; U S Link.; and, as to their CLEC activities, Ace Telephone Company, Hutchinson Telephone Company, and Paul Bunyan Telephone Company.

between Qwest and DTI or whether it simply interpreted (clarified) obligations already existing under the parties' interconnection agreement.

This dispute arose in the context of litigating DTI's complaint. In countering DTI's complaint, Qwest took the position that the action requested by DTI was not required by terms of the parties' interconnection agreement and that, therefore, any agreement to do those things would be an amendment to the interconnection agreement. Likewise, in the context of its complaint against Qwest, DTI and the CLECs argued that these actions were already required of Qwest under terms of the interconnection agreement and that no amendment to the interconnection agreement was necessary.

Once the parties agreed on what actions Qwest would take (see Agreement) the real import of the distinction shifted to whether the actions Qwest promised to take regarding tandem functionality for DTI and the signatory CLECs would be also become available across-the-board to all CLECs.

At the hearing, there came to be general agreement on the desirability of treating the settled terms as an amendment to the Qwest-DTI interconnection agreement.

- Qwest emphasized that it intended to make the terms available to all CLECs and noted that the Settlement Agreement states that the Company agrees to apply the terms of the Agreement to all CLECs consistent with the non-discrimination requirements under federal and state law.
- The Department stressed the importance of treating the Settlement terms as amending the Qwest-DTI interconnection agreement so that any CLEC (current or future) would be able to easily select these arrangements/terms for its interconnection agreement with Qwest.
- The consortium of small CLECs, which had initially opposed viewing the settlement terms as amending the interconnection agreement, acknowledged the value of assuring that the terms would be available to all CLECs (current and future) via the pick and choose provisions of Section 252 (i) of the Federal Telecommunications Act of 1996. The consortium of small CLECs withdrew its opposition to viewing the settlement terms as amending the interconnection agreement and instead supported doing so.

The Commission has analyzed the settlement terms and finds that they require Qwest to do things that the Company was not required to do under the existing interconnection agreement. For instance, in local calling areas not currently served by an official local tandem, the Settlement Agreement requires Qwest to provide CLECs with local transit service to allow CLECs to complete EAS calls to and from the exchanges included in Commission approved EAS calling areas.

As such, the Settlement Agreement amends the interconnection agreements between Qwest

and the CLECs signing the settlement agreement. The parties' interconnection agreements, as amended by the settlement terms, will be available to any CLEC requesting a copy pursuant to Section 252 (i) of the Federal Telecommunications Act.

**ORDER**

1. The Settlement Agreement between Qwest, DTI, and the signatory CLECs (copy attached, signature pages excluded) is approved.
2. The parties shall make their interconnection agreements, as amended by the settlement terms, available to any CLEC requesting a copy per Section 252 (i) of the Federal Telecommunications Act of 1996.
3. This Order shall become effective immediately.

**BY ORDER OF THE COMMISSION**

**Burl W. Haar  
Executive Secretary**

**(S E A L)**

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